

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**

**NASHVILLE, TENNESSEE**

**September 22, 2003**

**IN RE:**

**COMPLAINT BY AENEAS COMMUNICATIONS, LLC  
AGAINST BELL SOUTH TELECOMMUNICATIONS, INC.  
ALLEGING ANTICOMPETITIVE BUSINESS PRACTICES**

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**DOCKET NO.  
02-01274**

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**ORDER DIRECTING PARTIES TO MEET TO RESOLVE DISPUTED MATTERS,  
APPOINTING MEDIATOR AND PERMITTING FILING OF COMPLAINT**

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This matter came before Chairman Deborah Taylor Tate, Director Sara Kyle and Director Ron Jones, of the Tennessee Regulatory Authority (the "Authority" or "TRA"), the voting panel assigned to this docket, at a regularly scheduled Authority Conference held on August 4, 2003, to consider the allegations of Jonathan Harlan, Chief Executive Officer of Aeneas Communications, LLC ("Aeneas"), filed on December 4, 2002 and April 4, 2003, and the response thereto filed by BellSouth Telecommunications, Inc. ("BellSouth").

**Background**

On December 5, 2002, the Authority received a letter from Mr. Harlan alleging "questionable" trade practices on the part of BellSouth.<sup>1</sup> In his letter, Mr. Harlan listed eight occurrences which he characterized as "a small sample of incidents" of anticompetitive conduct on the part of BellSouth. In closing, Mr. Harlan requested the TRA's direction as to "what recourse Aeneas may take to insure remedy to these problems."<sup>2</sup>

On December 12, 2002, the Authority forwarded Mr. Harlan's letter to BellSouth and requested a response thereto within thirty days. On December 20, 2002, BellSouth filed a request

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<sup>1</sup> Letter to the TRA from Jonathan V. Harlan, CEO of Aeneas Communications, LLC, p. 1 (December 5, 2002).

<sup>2</sup> *Id.*, p. 4.

for extension of time to respond to Mr. Harlan's letter, asserting that its investigation of the allegations was not complete. On January 21, 2003, BellSouth filed a response to Mr. Harlan's letter addressing each allegation described therein. BellSouth admitted error with regard to two of the incidents, denied responsibility in five of them and stated that it lacked sufficient information to be able to investigate one of the allegations.

On March 20, 2003, the Authority issued a Data Request to Aeneas seeking information regarding the specific remedies it was seeking in connection with the allegations stated in its letter. On April 4, 2003, Mr. Harlan responded to the Data Request, identifying six specific remedies. In addition, Mr. Harlan addressed each response by BellSouth and listed twelve additional allegations of anticompetitive conduct by BellSouth. BellSouth did not file a response to this document.

#### **August 4, 2003 Authority Conference**

At the August 4, 2003 Authority Conference the panel assigned to this docket considered Mr. Harlan's allegations. Henry Walker, Esq., counsel for Aeneas, and Guy Hicks, Esq., counsel for BellSouth, participated in the proceedings. As the discussion commenced, Mr. Walker noted that the complaints at issue were filed *pro se* by Mr. Harlan, as were all subsequent filings on behalf of Aeneas in this docket.

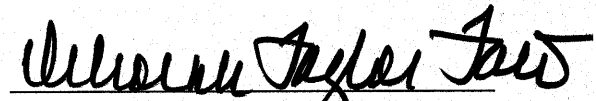
After some discussion, the parties agreed to meet together subsequently to attempt to resolve or at least narrow the issues. The panel then directed the parties to inform General Counsel should their discussions fail to resolve the issues and to request mediation. The panel designated Authority Counsel Lynn Questell to act as mediator.

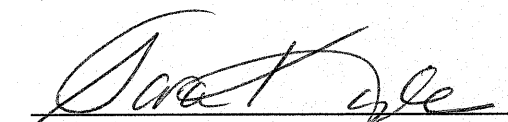
The panel directed Aeneas to reassert this matter before the Authority, should mediation fail to resolve all the issues, in a filing that would be consistent with Tenn. Comp. R. & Regs. 1220-1-2-.09. The panel specifically required that the filing should (1) set forth with specificity

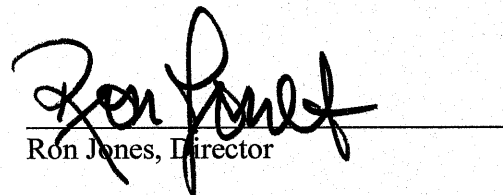
the factual basis and legal grounds upon which the complaint is based; (2) enumerate each statute allegedly violated by BellSouth and state each fact demonstrating a violation of the statute; and (3) enumerate any Authority rule or regulation relied upon for a claim, setting forth the manner of each alleged violation of that rule or regulation.<sup>3</sup>

**IT IS THEREFORE ORDERED THAT:**

1. The parties shall meet together in an attempt to resolve the disputed matters raised in the correspondence filed with the Authority on December 4, 2002 and April 4, 2003.
2. In the event that issues remain unresolved after the parties confer, the parties shall notify General Counsel for the Authority and may request mediation.
3. Authority Counsel Lynn Questell is approved to mediate any issues that remain unresolved by the parties.
4. Should issues remain unresolved following mediation, Aeneas may file a complaint consistent with Tenn. Comp. R. & Regs. 1220-1-2-.09 in order to present the remaining issues to the Authority for consideration.

  
Deborah Taylor Tate, Chairman

  
Sara Kyle, Director

  
Ron Jones, Director

<sup>3</sup> See Tenn. Comp. R. & Regs. 1220-1-2-.09(1)(c)-(e).